

## Follow-up to the April 10, 2003 NSR Reform Issue Papers

On April 10, 2003, the Indiana Department of Environmental Management (IDEM), Office of Air Quality (OAQ) held an informal public meeting to discuss several potential issues that had been identified by IDEM or other stakeholders at that time. Since that time, the OAQ - New Source Review Reform Team (team) has spent time talking to the United States Environmental Protection Agency (U.S. EPA), other state agencies, industry, and stakeholders regarding the New Source Review (NSR) Reform rules. After much discussion and research of past Prevention of Significant Deterioration (PSD) decisions, IDEM has made some preliminary determinations on whether or not each issue identified should be pursued differently than the federal rules during the state rulemaking. This paper summarizes each potential issue raised in the April 10 issue papers and gives a brief explanation of the team's thoughts on whether the issue should be pursued further in the state rulemaking process. Comments on these issues as well as any others not identified are always welcome, and this paper is not intended to state IDEM's final position on any issue or limit the scope of any stakeholder's input during the rule process. IDEM is committed to an open rulemaking process and promotes active involvement from all stakeholders.

The issues presented below are from the four issue papers discussed at the April 10, 2003 public meeting. A summary of each issue that was identified is provided here for reference; refer to the April 10, 2003 issue paper for a more detailed description of the issue. Those papers are available on the NSR Reform web site at: <http://www.in.gov/idem/rules/air/apcb0367/index.html>.

### I. Applicability Test

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA

Summary: There are general requirements in the Clean Air Act (CAA) that do not allow states to adopt rules that are less stringent than the federal standard. U.S. EPA included some language in the preamble to the NSR reform provisions that implied that this measure might be harder to determine than in the past due to the voluntary nature of many of the reform provisions.

Current Thoughts: U.S. EPA has since clarified that it does not necessarily expect all programs to look the same, and that they will review a program as a whole to determine if changes are acceptable. In addition, U.S. EPA expects changes to states' minor NSR programs to allow implementation of some of the reform provisions and recognizes that minor NSR programs vary state by state. Since IDEM intends to limit the scope of changes to only those changes that can be justified to provide greater environmental benefit in Indiana or additions or clarifications that are necessary for implementation on the state level and intends to work closely with U.S. EPA Region V throughout the rulemaking process, IDEM does not believe that this issue will be significant for Indiana.

2. The role of "minor NSR" permitting for new emission units and for modified emission units when exempt from "major NSR"

Summary: The NSR reform provisions do not require that owners notify the state or obtain approval from the state for modifications that do not result in a significant net emissions increase using the new applicability test (except that a notification is required for modifications involving electric utility steam generating units). Without notice or approval requirements, improper use of the new applicability test could create compliance and enforcement situations or cause a violation of the NAAQS or PSD increment to occur. Requiring a notice and go for projects could create a compliance burden, and requiring a minor NSR approval process could create additional permitting burden.

Current Thoughts: Some projects may trigger minor NSR modification provisions or Title V permit modifications under the current source modification provisions and Title V permit modification rules, requiring separate review without any revisions to the current rules. In these cases, IDEM can review major NSR applicability with the minor NSR review. Although IDEM

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feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for pre-construction review of a source owner's applicability determination. During review of the annual Part 70 compliance certification, IDEM may request information regarding those recorded projects that did not trigger minor NSR. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

3. Concerns regarding possible violation of PSD BACT requirements if source analysis of applicability test is not required to be submitted to the reviewing agency prior to construction.

Summary: Since no pre-approval from the State of the applicability analysis is required, problems could occur if an applicability analysis is flawed and the project actually is major for PSD. The new federal rules could result in increased compliance and enforcement situations for the State in addition to possible increased project cost and delays in operation for the source.

Current Thoughts: Some projects may trigger minor NSR modification provisions or Title V permit modifications under the current source modification provisions and Title V permit modification rules, requiring separate review that could help identify projects that should have gone through major NSR. Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for pre-construction review of a source owner's applicability determination. During review of the annual Part 70 compliance certification, IDEM may request information regarding those recorded projects that did not trigger minor NSR. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

4. Adjustments to baseline and projected actual emissions

Summary: The new federal rules require sources to calculate the baseline actual or projected actual emissions using the fugitive emissions and emissions associated with startups, shutdowns, and malfunctions. Such emissions are rarely measured or recorded and are very difficult to quantify.

Current Thoughts: IDEM has preliminarily determined that this may be an issue that requires more specific criteria in the state rule to avoid implementation issues. Refer to the document, "NSR Reform Positions and Issues for Further Discussion Paper", for an explanation.

5. Concerns about how sources will determine projected emissions

Summary: A source owner could over-predict expected growth unrelated to a modification, causing an underestimate of the projected actual annual emissions due to the modification. The state rules could include a regulatory review and public notice process to verify that the emissions do not cause or contribute to a violation of the NAAQS or PSD increment.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for pre-construction review of a source owner's applicability determination. During review of the annual Part 70 compliance certification, IDEM may request information regarding those recorded projects that did not trigger minor NSR. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

6. Would adopting the new federal applicability test result in an emissions increase that would be controlled under the current state rules?

Summary: There is concern that the new applicability test will allow large emitting projects to operate without controls.

Current Thoughts: IDEM attempted to review some recent permit actions to determine whether the new rules would result in a significant emission increase that would be controlled under the current state rules. Since IDEM may not have 10 years of past actual emissions data and information necessary to estimate the projected actual annual emissions, it is very difficult to determine exactly whether this could occur. Since many sources accept limits to avoid major new

source review applicability for modifications, the only difference under the federal NSR rules may be that these sources will not have explicit enforceable limits in their permits. Because of this, there may not be an actual environmental benefit to require IDEM approval of applicability determinations for projects that do not result in a significant net emissions increase. Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for pre-construction review of a source owner's applicability determination. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

## II. Clean Unit

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA

Summary: There are general requirements in the Clean Air Act (CAA) that do not allow states to adopt rules that are less stringent than the federal standard. U.S. EPA included some language in the preamble to the NSR reform provisions that implied that this measure might be harder to determine than in the past due to the voluntary nature of many of the reform provisions.

Current Thoughts: U.S. EPA has since clarified that it does not necessarily expect all programs to look the same, and that they will review a program as a whole to determine if changes are acceptable. In addition, U.S. EPA expects changes to states' minor NSR programs to allow implementation of some of the reform provisions and recognizes that minor NSR programs vary state by state. Since IDEM intends to limit the scope of changes to only those that can be justified to provide greater environmental benefit in Indiana or additions that are necessary for implementation on the state level and intends to work closely with U.S. EPA Region V throughout the rulemaking process, IDEM does not believe that this issue will be significant for Indiana.

2. Retroactive Clean Unit designation and the associated time period

Summary: There may be limited air quality benefit or no new air quality benefit for emissions units that previously installed controls to receive a Clean Unit Designation for a short period of time, based on an older level of BACT.

Current Thoughts: IDEM has preliminarily determined that this may be an issue that should be handled differently in the state rule to provide greater air quality benefit to the State in exchange for the flexibility the designation provides. Refer to the document, "NSR Reform Positions and Issues for Further Discussion Paper", for an explanation.

3. Possibility of revisions to 326 IAC 2-1.1-7 to include a permitting fee for the review of a Clean Unit designation request for units that do not go through major NSR

Summary: Review by IDEM of Clean Unit designation applications for units that do not automatically qualify (i.e., do not go through major NSR) will be resource-intensive.

Current Thoughts: The new provision of a Clean Unit designation for an emissions unit that did not go through major NSR is highlighted in "NSR Reform Positions and Issues for Further Discussion Paper". An exhaustive review with BACT/LAER level of analysis is proposed for these units. The fees for these reviews will be in line with fees in 326 IAC 2-1.1-7(3).

4. Comparability analysis of previous BACT and LAER determinations

Summary: IDEM's review of the past 10 years of BACT decisions indicates that the control levels can vary widely over a period of five years for many source categories. There is a much greater environmental benefit to require that an emissions unit demonstrate a level of emission control at least as stringent as current day BACT or LAER.

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Current Thoughts: IDEM has preliminarily determined that this may be an issue that should be handled differently in the state rule to provide environmental benefit to the State in exchange for the flexibility the designation provides. Refer to the document, “NSR Reform Positions and Issues for Further Discussion Paper”, for an explanation.

5. Physical and Operational Characteristics as the basis for a Clean Unit Designation  
Summary: It may be useful to identify some of the criteria that make up the physical and operational characteristics of a unit. Clarification may eliminate uncertainty regarding: whether a modification would cause a Clean Unit to lose its designation; preventing compliance and enforcement issues that may result with a determination made without clear criteria; and helping the public understand the types of modifications that can be made at a Clean Unit without the opportunity for notice and comment.

Current Thoughts: IDEM has preliminarily determined that this may be an issue that should be handled differently in the state rule to provide clarification that the physical and operational characteristics of the Clean Unit include the Potential to Emit (PTE) and/or production capacity or throughput of the unit. This clarification can provide certainty as to what a source can and cannot do while keeping the Clean Unit Designation. Refer to the document, “NSR Reform Positions and Issues for Further Discussion Paper”, for an explanation.

6. Revisions to the minor NSR SIP-approved permitting program  
Summary: Clean Unit designations for emissions units that achieve an emissions limitation comparable to BACT or LAER must be completed by issuing a permit through a permitting program that has been approved by U.S. EPA and that conforms with the requirements of 40 CFR 51.160 through 51.164.

Current Thoughts: This is a U.S. EPA requirement in order to establish how Clean Unit Designations will be made. Refer to the “Implementation Mechanisms” portion of the document, “NSR Reform Positions and Issues for Further Discussion Paper”, for an explanation of how IDEM will propose to address these designations through the source modification provisions.

7. “Wiping the slate clean” for netting calculations  
Summary: It is not clear in the rules what happens to emission changes existing prior to the time the Clean Unit started operation and which are otherwise contemporaneous to any changes currently proposed at the source when performing subsequent netting analyses.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for netting analyses at sources with Clean Units. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

8. How does a change in area designation from attainment to nonattainment affect Clean Units?

Summary: Since a Clean Unit designation is not affected by re-designation of an attainment area to nonattainment, the continued air quality benefit of a Clean Unit designation may be questionable if an emissions unit is designated a Clean Unit for a pollutant in an area that becomes nonattainment for that pollutant.

Current Thoughts: IDEM has broad mechanisms available to address achieving attainment status in an area that is designated nonattainment, such as RACT provisions. In addition, if IDEM changes the Clean Unit provisions in items II.2 and II.4 as proposed, a Clean Unit should be well controlled. Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for netting analyses at sources with Clean Units. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

9. Using the Title V program alone to make Clean Unit designations

Summary: Clean Unit designations for emissions units that achieve an emissions limitation comparable to BACT or LAER must be completed by issuing a permit through a SIP-approved permitting program that has been approved by U.S. EPA. After the designation is made, it must be incorporated into the Title V permit. This two-step process may be unnecessarily cumbersome.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for the two-step process because the Title V program is separate from the SIP. Instead, IDEM will continue to use the current streamlined procedures where a permit modification is written simultaneously with a source modification. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

### III. PAL

1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA

Summary: There are general requirements in the Clean Air Act (CAA) that do not allow states to adopt rules that are less stringent than the federal standard. U.S. EPA included some language in the preamble to the NSR reform provisions that implied that this measure might be harder to determine than in the past due to the voluntary nature of many of the reform provisions.

Current Thoughts: U.S. EPA has since clarified that it does not necessarily expect all programs to look the same, and that they will review a program as a whole to determine if changes are acceptable. In addition, U.S. EPA expects changes to states' minor NSR programs to allow implementation of some of the reform provisions and recognizes that minor NSR programs vary state by state. Since IDEM intends to limit the scope of changes to only those changes that can be justified to provide greater environmental benefit in Indiana or additions or clarifications that are necessary for implementation on the state level and intends to work closely with U.S. EPA Region V throughout the rulemaking process, IDEM does not believe that this issue will be significant for Indiana.

2. Limit the PAL applicability to specific source categories or pollutants

Summary: In EPA's environmental benefit analysis they stated that the greatest demand for changes involve Volatile Organic Compound (VOC) emissions. The state rule could limit the PAL applicability to those source categories and VOC emissions, and consider the option of adding other source categories or pollutants at a later time when there has been a demonstrated need for such flexibility and an environmental benefit analysis.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language by limiting the types of sources that can apply for a PAL. The case-specific reviews of PAL requests will allow IDEM the discretion to ensure that a source that obtains a PAL can install proper monitoring to adequately demonstrate compliance. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

3. Possibility of revisions to 326 IAC 2-1.1-7 and 326 IAC 2-1.1-8 to include a permitting fee and timeframe for the review of PAL

Summary: The up-front review of the PAL permits will be a resource-intensive review requiring time to cooperate with the source and public to determine the proper terms.

Current Thoughts: IDEM will propose to use the significant permit modification procedures in 326 IAC 2-7-12 to review PAL requests and establish the time frame for review. IDEM will propose a fee for the permit modification application to help offset the cost of resources to complete these reviews. Refer to the "Implementation Mechanisms" portion of the document,

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“NSR Reform Positions and Issues for Further Discussion Paper” for further information on this topic.

4. Termination of PAL Procedures for termination or revocation of the PAL

Summary: The new federal rules do not address voluntary termination or revocation of a PAL.

Current Thoughts: IDEM has preliminarily determined that this may be an issue that should be addressed in the state rule to provide clear mechanisms for voluntary termination or revocation of a PAL. Refer to the document, “NSR Reform Positions and Issues for Further Discussion Paper”, for an explanation.

5. Revisions to rules other than 326 IAC 2-2 and 326 IAC 2-3 [PSD and major non-attainment NSR programs] to address implementation of PAL

Summary: The current Indiana Title V program does not include the requirements necessary to implement the PAL program.

Current Thoughts: This is a U.S. EPA requirement in order to specify how PALs will be established. Refer to the “Implementation Mechanisms” portion of the document, “NSR Reform Positions and Issues for Further Discussion Paper”, for an explanation of how IDEM proposes to address PALs through the significant permit modification provisions.

6. Can the existing state rule be used, even in the interim, to develop PAL consistent with the federal rule?

Summary: The state rule was submitted to U.S. EPA as a revision to the minor NSR SIP on February 3, 1999, but has not yet been approved. It is unlikely that EPA would accept IDEM using the current rule.

Current Thoughts: IDEM does not have any current plans to issue PALs under the existing state rule since it is not approved by the U.S. EPA.

7. Should the state rule be more specific regarding how IDEM will set the PAL level at renewal?

Summary: The new federal rule provides various options that IDEM could consider when renewing a PAL.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for PAL renewals because IDEM feels that renewals are better addressed on a case-by-case basis. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

8. Consideration of a declining cap

Summary: Discussions of the PAL concept during the years of federal NSR Reform have included the concept of a declining cap to assure decreased emissions over time while still providing sources with the certainty and flexibility of a cap.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for declining caps because IDEM feels that this issue is better addressed on a case-by-case basis within the discretion provided to IDEM in the federal rule language. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

## IV. Pollution Control Project Exclusion

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1. Anything different than the federal rules might be difficult to get approved into the SIP by US EPA

Summary: There are general requirements in the Clean Air Act (CAA) that do not allow states to adopt rules that are less stringent than the federal standard, and U.S. EPA included some language in the preamble to the NSR reform provisions that implied that this measure might be harder to determine than in the past due to the voluntary nature of many of the reform provisions.

Current Thoughts: U.S. EPA has since clarified that it does not necessarily expect all programs to look the same, and that they will review a program as a whole to determine if changes are acceptable. In addition, U.S. EPA expects changes to states' minor NSR programs to allow implementation of some of the reform provisions and recognizes that minor NSR programs vary state by state. Since IDEM intends to limit the scope of changes to only those changes that can be justified to provide greater environmental benefit in Indiana or additions or clarifications that are necessary for implementation on the state level and intends to work closely with U.S. EPA Region V throughout the rulemaking process, IDEM does not believe that this issue will be significant for Indiana.

2. Notification only process for listed projects versus significant lead-time for obtaining pre-approval of a PCP

Summary: Adopting the listed PCP procedures without changes could result in increased compliance risk to sources and burden to the state since those projects would not require pre-approval. Requiring pre-approval of listed projects may upset the balance of administrative burden and flexibility by increasing procedural delays, possibly unnecessarily in most instances.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for the notice and go process for listed projects because IDEM feels that most listed projects will be environmentally beneficial, and IDEM can address concerns during the permit modification, if necessary. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

3. Possibility of revisions to 326 IAC 2-1.1-7 to include a fee for the review of notifications

Summary: IDEM does not have any specific fees to support the review associated with notifications versus permit applications.

Current Thoughts: IDEM will continue to charge fees for unlisted projects, but will not propose to charge fees for listed projects that only require notification.

4. Air quality violation concerns if analysis is not required to prove that a NAAQS or PSD increment are not violated or if collateral emissions increases of a nonattainment pollutant are not offset

Summary: The new federal rules do not specify some of the provisions explicitly stated in the preamble to the rule, so clarification may be necessary within the rule language.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for the PCPs because IDEM can address source-specific concerns within the context of review of the notification or permit application for the PCP. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

5. Verification that the PCP achieves the claimed reductions such that it is environmentally beneficial and that collateral emissions are minimized

Summary: No reporting is required to ensure that the PCP achieves the claimed reductions.

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Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for the PCPs. IDEM feels that the operational requirements for a PCP in the federal rule are adequate and that IDEM has the necessary discretion to supplement those requirements if there are source-specific concerns regarding whether a PCP will achieve the claimed reductions. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

6. Restrictions on emission reduction credit generation

Summary: Allowing PCPs to generate emission reduction credits for further reductions may be problematic for implementation. Drawing the line on what level of reduction was needed for the project to be designated beneficial and what may be considered as excess may be difficult to determine.

Current Thoughts: Although IDEM feels this issue is still important, IDEM will not be pursuing language contrary to the federal NSR language for the PCPs because concerns with requests for emissions reduction credits can be addressed on a case-by-case basis. If you wish to address this issue in the rulemaking, you may do so informally or formally during a public hearing or official comment period.

7. Can the current exclusions in the existing state rules be used to implement the new federal exclusion procedures now?

Summary: Based on the existing state rules, the notification process allowed under the new federal rules for listed PCPs will not be allowed prior to the revision of the state rules.

Current Thoughts: In the interim, IDEM must follow the existing state rules for approval of PCPs; however, IDEM may find that a project that is a listed project in the federal rules does not need a full explanation of why it is environmentally beneficial.